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VERIGY US, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VERIGY US, INC, a Delaware Corporation,

Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;  
WESLEY MAYDER, an individual; SILICON  
TEST SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
California Limited Liability Corporation,  
inclusive,

Defendants.

Case No. C07 04330 RMW (HRL)

**VERIGY'S REQUEST FOR ATTORNEYS'  
FEES & COSTS EXPENDED IN  
CONJUNCTION WITH ITS CONTEMPT  
MOTION**

Judge: Honorable Ronald M. Whyte  
Crtrm. 6

Complaint Filed: August 22, 2007  
Bench Trial Date: December 15, 2008

Pursuant to the Court's Order Granting Plaintiff's Motion to Find Defendants in Contempt of Court for Violating the TRO, filed May 20, 2008 (Docket No. 210), in which the Court ordered that plaintiff Verigy US, Inc. ("Verigy") is "entitled to its reasonable attorney's fees expended in conjunction with its motion to find defendants in contempt," (*id.*, at p.28), Verigy hereby requests an award of attorney's fees and costs from defendants in the total amount of \$40,619.98, as detailed herein below and in the attached declarations of Melinda Morton, Michael Stebbins, and Don Gagliardi, and in the itemized summary of attorneys' fees and costs expended in conjunction with Verigy's contempt motion.

### **I. INTRODUCTION AND BACKGROUND**

On August 22, 2007, Verigy brought this action against defendants Romi Mayder, Wes Mayder, and the companies they founded, defendants Silicon Test Systems, Inc. and Silicon Test Solutions LLC, for misappropriation of trade secrets and related claims. On August 24, 2007, a temporary restraining order ("TRO") was entered pending hearing on Verigy's motion for preliminary injunction. On December 3, 2007, before the preliminary injunction motion could be heard, Verigy moved for an order to show cause why defendants should not be held in contempt of the TRO. Defendants asked that the contempt motion be deferred until after hearing on the preliminary injunction motion. On February 29, 2008, as part of its preliminary injunction order, the Court issued an order to show cause why defendants should not be held in contempt.

The contempt motion was fully briefed, with Verigy's moving papers filed December 5, 2007, defendants' opposition papers filed March 21, 2008, and Verigy's reply papers filed March 28, 2008. The contempt hearing was held on April 11, 2008. Thereafter, on May 20, 2008, the Court issued an order finding defendants in contempt of the TRO. As a sanction for the contempt, the Court extended the duration of the preliminary injunction an additional four months and pertinently ruled: "*Verigy is also entitled to its reasonable attorney's fees expended in conjunction with its motion to find defendants in contempt. Within 20 days of this order, Verigy shall inform the court of the amount it requests in briefing not to exceed 5 pages, along with a declaration and documentation supporting such request.*" (Order filed May 20, 2008, at pp. 14-15) (Docket No. 210) (emphasis added).

1 **II. ARGUMENT**

2 As shown above, this Court has already ruled that Verigy is entitled to its reasonable  
3 attorney's fees expended in conjunction with its motion to find defendants in contempt. The only  
4 issue concerns the reasonableness of the request for fees. A district court "has a great deal of  
5 discretion in determining the reasonableness of the fee." *Gates v. Deukmejian*, 987 F.2d 1392,  
6 1398 (9<sup>th</sup> Cir. 1992).

7 **A. Verigy's Fees Incurred on the Contempt Motion Are Reasonable.**

8 Here, Verigy is requesting \$38,215.508 in attorneys' fees, which as detailed in the  
9 declarations and supporting documentation, involves the work of two experienced attorneys,  
10 Melinda Morton and Michael Stebbins, in preparing and prosecuting the contempt motion  
11 (\$35,191.50), as well as costs and "fees on fees" for work of a third experienced attorney, Don  
12 Gagliardi, in preparing this fee request (\$3,024).

13 The "starting point for determining a reasonable fee award is the calculation of the  
14 'lodestar.'" *Marbled Murrelet v. Pacific Lumber Co.*, 163 F.R.D. 308, 316 (N.D.Cal. 1995), citing  
15 *Chalmers v. City of Los Angeles*, 796 F.2d 1205 (9<sup>th</sup> Cir. 1986). "To determine the 'lodestar,' the  
16 court must multiply the amount of hours reasonably expended . . . by a reasonable hourly rate."  
17 *See Marbled Murrelet*, 163 F.R.D. at 316, citing *Chalmers*, 796 F.2d at 1210. In the Ninth  
18 Circuit, "[a] 'strong presumption' exists that the lodestar figure represents a 'reasonable' fee."  
19 *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9<sup>th</sup> Cir. 1987).

20 "According to the Laffey Matrix for 2006-2007 . . . a reasonable hourly rate for an attorney  
21 11-19 years out of law school is \$509. The appropriate hourly rate for an attorney 8-10 years out  
22 of law school is \$452." *Kempf v. Barrett Business Services, Inc.*, No. C-06-3161 SC, 2007 WL  
23 4167016, at \*5 (N.D.Cal. Nov. 20, 2007).<sup>1</sup> On the instant motion, Ms. Morton, a 1997 Yale Law  
24 School graduate with 11 years' experience in complex business litigation, billed at an

25 \_\_\_\_\_  
26 <sup>1</sup> The Laffey Matrix is designed to provide objective guidance in appropriate hourly rates for  
27 attorneys in the Washington, D.C. area, and "has also been recognized as a valuable tool in this  
28 district, with some modification for economic differences between the San Francisco Bay Area  
and Washington, D.C." *See Kempf*, 2007 WL 4167016, at \* 5.

1 hourly rate of \$435 (2007 hours) and \$450 (2008 hours). (Morton Decl., ¶¶ 2-3). Mr. Stebbins, a  
2 1988 Santa Clara Law School graduate with 20 years' experience in complex business litigation,  
3 billed at an hourly rate of \$465 (2007 hours) and \$470 (2008 hours). (Stebbins Decl., ¶¶ 2-3).  
4 These rates, which are "below the Laffey Matrix rates for attorneys of comparable experience,"  
5 are necessarily reasonable. *Id.* at \*5.

6 The number of hours spent by Ms. Morton and Mr. Stebbins on the motion was also  
7 reasonable. Ms. Morton spent 52.8 hours in extensive legal research concerning whether the TRO  
8 was clear and specific, whether an extension of the preliminary injunction was an available  
9 remedy, whether marking a document as "confidential" rather than "highly confidential" waives  
10 trade secret status and appearing at the hearing on the contempt motion. (Morton Decl., ¶ 3-4 and  
11 Ex. A) (chart itemizing attorney time and costs related to contempt motion). Mr. Stebbins spent  
12 24.7 hours in communicating with Intel regarding the nature and extent of Defendants' ongoing  
13 work to continue development of the Flash Enhancer product with Intel's input following issuance  
14 of the TRO, coordination and preparation of the deposition of David McMann, reviewing  
15 documents produced by Intel and participating in the drafting of the reply brief and related  
16 declarations in support of the Order to Show Cause regarding the contempt motion. (Stebbins  
17 Decl., ¶ 3-4 and Ex. A) (same). This was a reasonable and not excessive period of time to spend  
18 on the motion considering the complexity of the issues raised by defendants' conduct.

19 Defendants' opposition brief introduced a number of legal arguments that required  
20 extensive legal research, and it was time-consuming to research these arguments. In particular, the  
21 arguments concerning whether TRO was clear and specific, whether an extension of the  
22 preliminary injunction was an available remedy, and whether marking a document as  
23 "confidential" rather than "highly confidential" waives trade secret status (an argument for which  
24 Defendants supplied no case law) required significant research. The research regarding  
25 appropriate remedies for civil contempt in this context or similar contexts was particularly time  
26 consuming, due to the lack of helpful treatise materials and the rarity of contempt proceedings in  
27 trade secret cases. Further, Defendants' opposition relied extensively on a Second Circuit  
28 decision, *Fonar Corp. v. Deccaidd Services, Inc.* 983 F.2d 427 (2<sup>nd</sup> Cir. 1993). As *Fonar* does not

1 accurately state the law in the Ninth Circuit, Ms. Morton was required to research what the Ninth  
2 Circuit law actually is regarding incorporation by reference and present that to the Court.

3 Mr. Stebbins was involved in communicating with Intel regarding the nature and extent of  
4 Defendants' ongoing work to continue development of the Flash Enhancer product with Intel's  
5 input following issuance of the TRO. Mr. Stebbins communicated with inside and outside counsel  
6 for Intel regarding the declarations of an Intel employee (Dick Weber) that were submitted in  
7 opposition to Verigy's motion for preliminary injunction and learned that those declarations were  
8 provided without Intel's knowledge or authorization and in direct contravention of instructions  
9 from Mr. Weber's supervisor, David McMann. Mr. Stebbins also coordinated the deposition of  
10 Mr. McMann and prepared the subpoena and FRCP 30(b)(6) deposition notice. He also traveled  
11 to Sacramento on January 8, 2008 and on January 9, 2008, Mr. Stebbins took the deposition of Mr.  
12 McMann. Documents produced by Intel confirming that Defendants had violated the TRO by,  
13 among other things, shipping prototypes of the Flash Enhancer product (which this Court  
14 determined was substantially derived from Verigy's trade secrets) to Intel in early November 2007  
15 were reviewed by Mr. Stebbins. Mr. Stebbins participated in the drafting of the reply brief and  
16 related declarations in support of the Order to Show Cause regarding contempt.

17 **B. Verigy's Costs Incurred on the Contempt Motion Are Reasonable.**

18 Additionally, Verigy requests its reasonable costs associated with the contempt motion in  
19 the amount of \$2,404.48. These consisted of courier fees to file and serve the confidential  
20 versions of the briefs and declarations to the Court and to Defendants' counsel, Westlaw research  
21 fees, and costs for the Intel deposition. (Morton Decl., ¶ 6 and Ex. A) (chart itemizing attorney  
22 time and costs related to contempt motion).

23 **C. Verigy Is Entitled to Recover Its Reasonable "Fees on Fees."**

24 Finally, Verigy is also entitled to its attorney's fees and costs incurred in bringing this  
25 request. "[F]ederal courts, including our own, have uniformly held that time spent in establishing  
26 the entitlement to and the amount of the fee is compensable.' This is so because it would be  
27 inconsistent to dilute a fees award by refusing to compensate attorneys for the time they  
28 reasonably spent in establishing their rightful claim to the fee." *Camacho v. Bridgeport Financial,*

